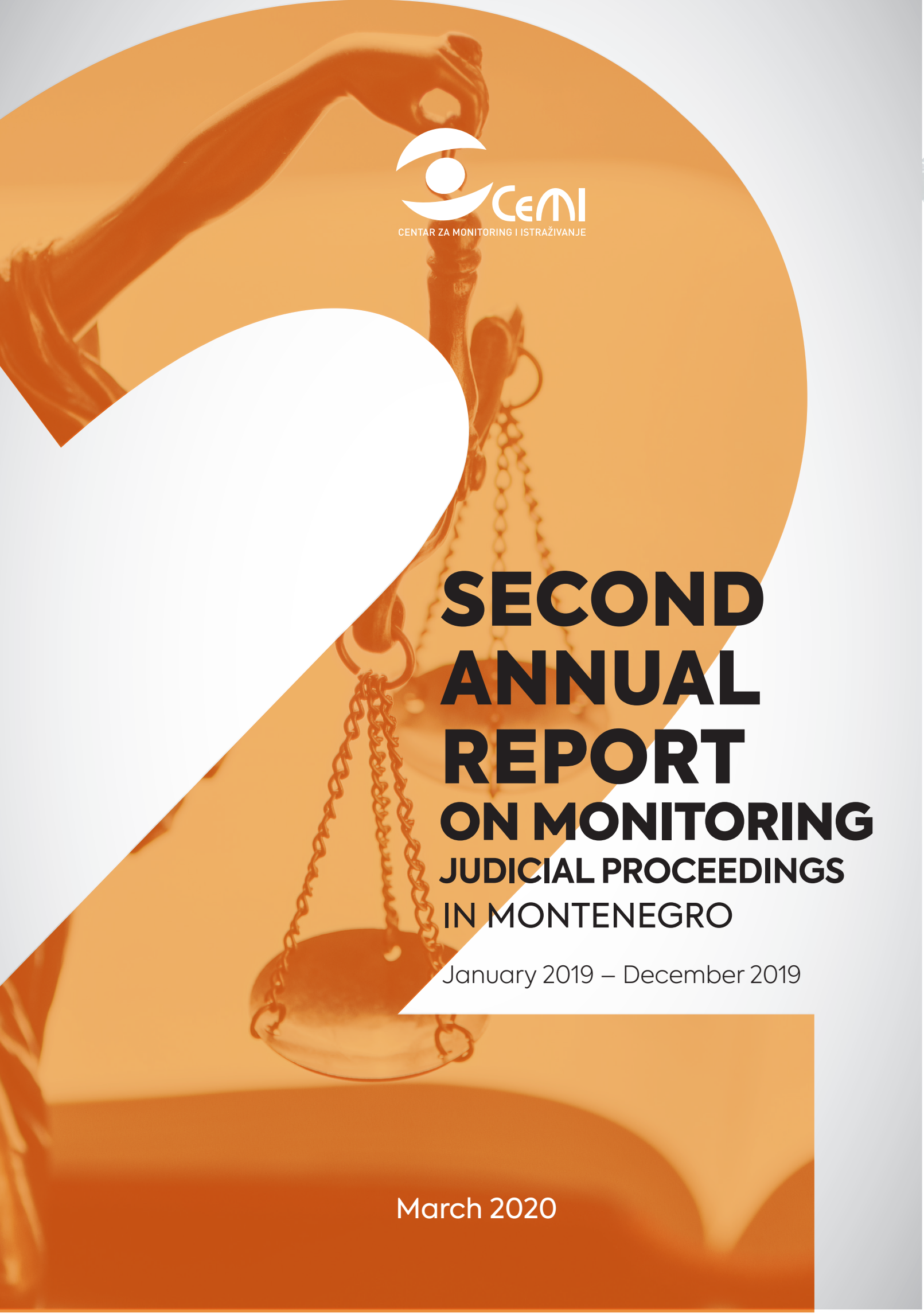
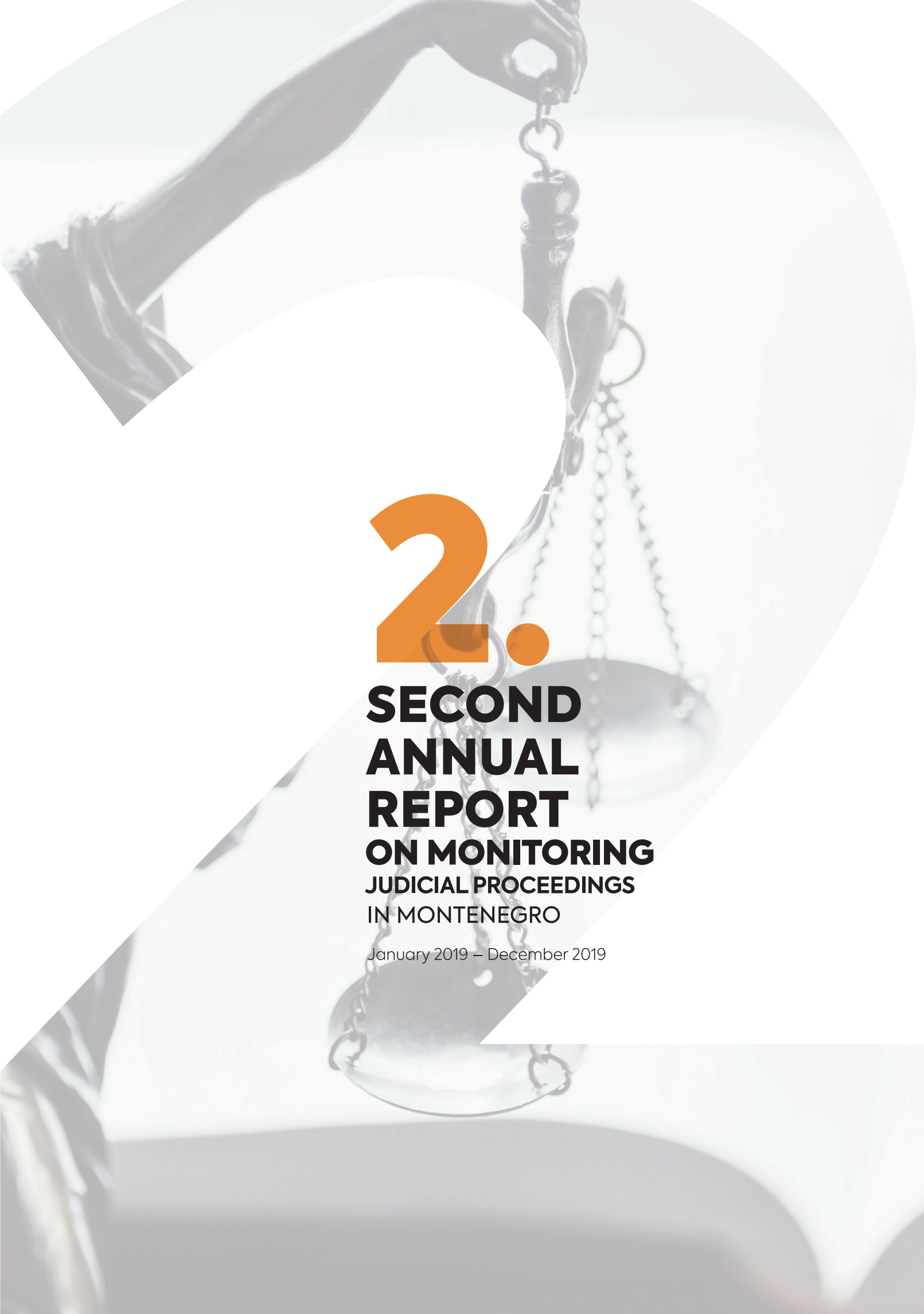


CENTAR ZA MONITORING I ISTRAŽIVANJE

SECOND ANNUAL REPORT ON MONITORING JUDICIAL PROCEEDINGS IN MONTENEGRO

January 2019 – December 2019

March 2020



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Publisher:

CENTAR ZA MONITORING I ISTRAŽIVANJE

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This Report was published as part of the project "Judiciary Reform: Upgrading CSO's capacities to contribute to the integrity of judiciary", implemented by the Centre for Monitoring and Research (CeMI), in collaboration with the Centre for Democracy and Human Rights (CEDEM) and the Network for the Affirmation of European Integration Process (MAEIP), funded by the European Union and co-financed by the Ministry of Public Administration of Montenegro.

CONTENT

I INTRODUCTION

The Centre for Monitoring and Research (CeMI), in collaboration with the Centre for Democracy and Human Rights (CEDEM) and the Network for the Affirmation of European Integration Processes (MAEIP), is implementing the project "Judicial Reform: Upgrading CSO's capacities to contribute to the integrity of judiciary" (hereinafter: the Project), funded by the European Union and co-financed by the Ministry of Public Administration of Montenegro.

The Project aims to contribute to achieving a greater degree of the rule of law in Montenegro, which will be reflected in the assessment and enhancement of the professionalism, accountability, efficiency and integrity of the judiciary through the establishment of closer cooperation and more efficient mechanisms between civil society organizations and judicial institutions. The aim of this Project is also reflected in the improvement of the capacities of local organizations and greater involvement of the civil society in the judicial system reform in Montenegro and negotiations related to Chapter 23 (Judiciary and Fundamental Rights).

One of the most significant Project activities is focused on the monitoring of judicial proceedings in the courts of Montenegro. Trial monitoring activities are conducted in accordance with the OSCE's methodology for judicial proceeding monitoring, developed by CeMI and the OSCE Mission to Montenegro, as part of the trial monitoring program implemented in the period between 2007-2014.

During the reporting period, which corresponds to the second year of the Project implementation, 642 cases were monitored by CeMI and CEDEM's observers. During the first reporting period, 150 cases (263 main hearings) were monitored by attendance of the hearing and the findings were presented in the first Annual Report on the monitored trials for the previous year. In the second reporting period, the observers monitored 492 cases by criminal case file examination in all the Basic Courts, and High Courts Podgorica and Bijelo Polje. The monitoring of judicial proceedings is conducted in accordance with the principles set out in the Memorandum of Cooperation, concluded between the Supreme Court of Montenegro, CeMI and CEDEM, at the very beginning of the project implementation.

This Report presents preliminary results of the second year of monitoring the judicial proceedings (January 2019 - December 2019). The main objective of the Report was to assess, based on direct access to the trials monitored, the state of case law in Montenegro regarding the application of both domestic legislation and international standards of the right to a fair trial. Also, the conclusions and preliminary recommendations which are based on the identified shortcomings, and which are an integral part of this Report suggest that the relevant institutions should implement appropriate measures in order to achieve a fair and efficient judicial system in Montenegro.

The Report consists of an introductory section that outlines the methodology of trial monitoring and provides general guidance on the purpose and scope of the trial monitoring program. The central part of the Report covers the results of judicial proceedings monitoring, with preliminary conclusions and recommendations on how to improve the practice of adherence to the standards of fair trial by all participants in judicial proceedings in Montenegro.

In order to protect the right to privacy and respect for the independence of the courts, the Report does not specify the names of the judges and parties to the proceedings.

Finally, in the introductory part, we would like to express gratitude to all representatives of the judiciary, the prosecution, lawyers and other colleagues who enabled the observers of CeMI and CEDEM to carry out the first phase of the Project activities relating to monitoring court proceedings, in line with the planned dynamics and methodology. We expect that this quality cooperation with all participants in judicial proceedings will continue in the next stage of the Project implementation.

II LEGAL FRAMEWORK

2.1. General legal framework

2.1.1. International standards

The standards of the right to a fair trial are enshrined in the most significant acts of international legal character that were enacted after World War II. Article 10 of the *Universal Declaration of Human Rights,* adopted by the United Nations General Assembly, provides that: *Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 14 paragraph 1 of the International Covenant on Civil and Political Rights provides that: All persons shall be equal before the courts and tribunals, and that in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*

An important international legal standard for a fair trial can be found in *Article 6 of the European Convention on Human Rights and Fundamental Freedoms* (hereinafter: the European Convention), which guarantees, inter alia, that in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Thus, it can be concluded that Article 6 of the European Convention provides for guarantees of respect for both procedural rights of the parties in civil proceedings (governed by Article 6 paragraph 1) and rights of the defendants in criminal proceedings (governed by Article 6 paragraphs 1, 2 and 3).

The case law of the European Court of Human Rights (hereinafter: the European Court) has led to the creation of new guarantees, which were not mentioned in Article 6, but resulted from the development of jurisprudence. Thus, for example, the application of Article 6 of the European Convention, specifically its section on the protection of the rights of the parties to (IN) civil procedure and their civil rights and obligations, in accordance with the European Court's case law, is linked with the cumulative presence of the following components: there must be a "dispute" over "rights" or "obligations"[1]; rights or obligations must have a basis in domestic law[2]; and - rights or obligations must be "civil" in nature.[3] On the other hand, in order to be applicable to criminal matters, Article 6 of the European Convention must fulfil any of the following components: the offense must be recognized, i.e. qualified as a crime under domestic law; (the first criterion from Engel case); - the nature of the offense (the second criterion from Engel case), - the nature and degree of severity of the possible penalty (the third criterion from Engel case, i.e. judgement).[4]

The question of the application of the European Convention in relation to Montenegro was raised in the first judgment of the European Court of Justice against Serbia and Montenegro.[5] This judgment is significant because it undoubtedly establishes that this Court has had jurisdiction to examine applications concerning human rights violations committed by Montenegrin state authorities, since 3 March 2004, when Serbia and

1 *Benthem v. The Netherlands*
2 *Roche v. The United Kingdom*
3 *Ringeisen v. Austria*
4 *Engel v. The Netherlands*
5 *Bijelić v. Montenegro and Serbia*

Montenegro informed the Council of Europe of the ratification of the European Convention on Human Rights, rather than since 6 June 2006, when the Committee of Ministers determined that Montenegro is bound by the Convention as an independent state. This is especially significant because the European Court of Human Rights has explicitly affirmed the continuity of entitlement to human rights and the view of the Human Rights Committee that "*from the moment people in a given territory become entitled to fundamental rights protection under international treaties, they continue to enjoy such protection, regardless of the change in government of the Signatory State, its division or creation of the successor States*".[6]

Fair trial guarantees can also be found in documents which are directly legally non-binding and which indicate to what direction the right to a fair trial evolves. Particular attention should be paid to the Council of Europe's recommendations, as well as to the non-binding United Nations' documents cited as point of reference in this Report.

2.1.2. Domestic criminal legislation

The beginning of the full implementation of the international and European standards of the right to a fair trial can be associated with the beginning of criminal justice reform in Montenegro at the end of 1998. In the meantime, on several occasions, the text of the Criminal Procedure Code (hereinafter: the CPC) and the Criminal Code of Montenegro have been improved through further alignment with European standards, by eliminating the shortcomings of the previous legislation in relation to the right to a fair trial. Many provisions of the CPC refer to standards of the right to a fair trial, and we will single out the most relevant ones.

The presumption of innocence and the principle of *in dubio pro reo* (Article 3 of the CPC) guarantees that everyone is presumed innocent until proven guilty by a court's final judgement, and that state authorities, the media, citizens' associations, public figures and other persons are obliged to comply with the rules of this Article, ensuring that their public statements about ongoing criminal proceedings do not violate other rules of the proceedings, the rights of defendant and injured party and the principle of judicial independence. Paragraph 3 of the CPC Article elaborates the principle *in dubio pro reo*, which means that even if, after obtaining all available evidence and presenting it in criminal proceedings, only a doubt remains of the existence of any of the significant features of the crime, or of the facts upon which the application of some provisions of the Criminal Code or this Code depends, the court's decision would be the one more favourable to the defendant.

Articles 4 and 5 of the CPC guarantee **the rights of suspects/defendants and the rights of persons deprived of their liberty**. Article 4 stipulates that suspect must be informed at the first hearing about the criminal offence they are charged with and the grounds for suspicion against them. A defendant must also have a right of say on all the facts and evidence charged with, as well as a right to present all the facts and evidence to their favour. It must be brought to the attention of suspects or defendants at the first hearing, that they do not have to make any statements or answer the questions, and that whatever statements they make can be used as evidence.

The right to an interpreter is regulated by Article 8 of the CPC. According to the basic principle defined by the CPC, the criminal proceedings are conducted in Montenegrin language. However, the CPC stipulates that parties, witnesses and other participants in the proceedings have the right to use their own language or language they understand during the proceedings. If the proceedings are not conducted in any of these languages, translation of testimony, documents and other written evidence will be provided. Parties, witnesses and

6 See more: Human Rights Action HRA: https:/www.hraction.org/2009/04/30/obavjestenje-za-javnost-povodom-presude-evropskog-suda-za-ljudska-prava-u-predmetu-bijelic-protiv-crne-gore-i-srbije/

other participants in the proceedings may waive their right to translation if they can speak the language used in the proceedings. It will be entered in the records that participants in the proceedings were properly instructed and that they presented their statement thereof. Pursuant to the CPC, translation is entrusted to an interpreter.

The right to a defence is governed by Articles 12 and 66 of the CPC. Article 12 stipulates that defendant has the right to defend themselves in person or through legal assistance by a lawyer of their own choosing. Also, a defendant has the right to have their defence lawyer present at the hearing, as well as to receive information before the first hearing of the right to have a defence lawyer and to agree the defence strategy with a defence lawyer. The CPC stipulates that defendant will be appointed a lawyer *ex officio*, if they fail to do it by themselves, and that they must be given sufficient time and opportunity to prepare their defence. According to Article 66, defendant is entitled to a defence lawyer. Defence lawyer may also be appointed by defendant's legal representative, spouse, their immediate family members, adoptive parent, or the person they adopted, brother, sister and foster parent, as well as by the person with whom the defendant lives in the extramarital union. Only a lawyer can perform defence activities under this Article. The defence lawyer is obliged to submit a power of attorney to the body in charge of the proceedings. Defendant can grant their defence lawyer a verbal power of attorney, to be entered in the records kept by the body in charge of the proceedings.

The impartiality of judges is governed by provisions of the CPC, setting the grounds for the exemption of judges referred to in Article 38. Pursuant to the provisions of this Article, a judge may not exercise judicial duty in the following circumstances:

- if they were injured party in a criminal offense;
- if defendant, their defence lawyer, prosecutor, injured party, their legal representative or those given power of attorney are their spouse, ex-spouse or live in the extramarital union with them, any direct ancestors or descendants to the defendant, collateral line relatives up to a fourth line, and in-laws up to a second line;
- if they are in one of the following relationships with defendant, their defence lawyer, prosecutor or injured party: a guardian, a protégé, an adoptive parent, a person they adopted, a foster parent or foster child;
- if they acted in the same criminal case as an investigating judge, prosecutor, defence lawyer, legal representative or those given power of attorney by injured party or prosecutor, or was examined as a witness or an expert witness;
- if they participated in the same case in a lower court decision or the decision referred to in Article 302, paragraph 10 of the CPC, or if in the same court they participated in a decision contested by an appeal;
- if they participated in the judgement passed in the same case by the lower court or a judgement referred to in Article 302 paragraph 10 of the CPC, or if they participated in a judgement which could be contested by an appeal, in the same court;
- in case of circumstances which cast doubt on their impartiality.

Impartiality, as a basic principle, is regulated in more detail by Article 4 of the **Code of Ethics of Judges**, which states that judicial impartiality is an essential concept and prerequisite for ensuring a fair trial. In accordance with ethical principles, a judge must be free from any connection, favouring treatment or bias that affect - or could be considered to affect - their ability to make decisions independently. According to the provisions of the Code, judge shall exercise their judicial function without favouring,

preconception or prejudice on the basis of race, skin colour, religion, nationality, age, marital status, sexual orientation, social and property status, political opinion and any other diversity. Both inside and outside the court, a judge will strive to maintain and strengthen public confidence in personal and institutional impartiality. Also, a judge is obliged to avoid situations that could reasonably cast doubt on their impartiality while exercising their judicial function, through their conduct inside and outside the court, in his professional and personal relations with members of the legal profession and other individuals. In line with the provisions of the Code, judge is required to refrain from making public statements or comments on ongoing cases that may give the public the impression of bias. When it comes to participation of judges in political activities, they are obliged to refrain from any similar activity or participation in political meetings and events organized by political parties, which could compromise the impression of their impartiality. It is also stipulated that judge will not assist the work of political parties by providing financial contributions. Finally, the Code prescribes that judge will not be a member or participate in the activities of secret associations, or associations whose work lacks transparency.[7]

The right to a trial without delay is governed by Article 15 of the CPC. Pursuant to provisions of this Article, defendant has the right to be brought to court in the shortest period of time and to be tried without delay. The court is obliged to conduct the proceedings without delay and to prevent any abuse of the rights belonging to participants in the proceedings. This Article stipulates that the duration of detention or other restrictions of the liberty must be kept to a minimum.

Finally, one of the key general principles that form an integral part of the right to a fair trial – **the principle of truth and fairness**, is governed by Article 16 of the CPC. Pursuant to this principle, a court, public prosecutor and other public authorities involved in criminal proceedings are obliged to truthfully and fully establish the facts that are important for reaching a lawful and fair decision, and with equal care examine and determine the facts against the defendant and those in their favour. The court is also obliged to provide the parties and defence lawyer with equal conditions with regard to the proposal for evidence, and approach and method of their presentation.

The aforementioned principles and provisions of the CPC are not the only ones that provide guarantees of the right to a fair trial, but these guarantees are also contained in provisions governing pre-trial procedure, almost until the transitional and final provisions. The aforementioned provisions will be presented in detail in the Report, primarily from the aspect of their compliance with international standards, and also from the point of view of their implementation in practice.

In this section, it should be emphasized that, in the process of criminal legislation reform, new criminal legal concepts, such as the plea agreement and the deferred prosecution, were introduced into the legal system of Montenegro. The aim of their introduction was to improve the efficiency of judicial institutions through enabling faster and easier completion of criminal proceedings. The plea agreement concept was introduced in the CPC in 2009. According to the initial Law, when criminal proceedings are conducted for one criminal offense or several concurrent criminal offenses liable to a term of imprisonment of up to ten years, defendant and their defence lawyer may be offered a plea agreement, or defendant and their defence lawyer may propose the agreement to a public prosecutor. The amendments to the CPC that followed in 2015, provided that a plea agreement could be concluded for all offenses prosecuted *ex officio*, except for the crimes of terrorism and war crimes. In the period after 2015, the implementation of this legal concept experienced a real expansion in the practice of the Public Prosecutor's Office.

On the other hand, the concept of deferred prosecution was introduced into the legal system with the aim of unburdening criminal proceedings in cases of offenses

7 *Code of Ethics was published in the "Official Gazette of Montenegro" 16/2014 and 24/2015.*

considered to be lower or moderate severity crimes, and enabling additional capacity and resources to deal more efficiently with cases that fall into the category of "serious" crime. Pursuant to the provisions of Article 272 of the CPC, a prosecutor may postpone criminal prosecution for offenses for which a fine or imprisonment of up to five years has been imposed, when it is considered appropriate, given the nature of the crime and the circumstances in which it was committed, offender's life before committing the offense and their personal characteristics. The CPC prescribes that suspect is obliged in this case to agree to fulfilment of one or more of the following obligations: to remove the harmful consequence caused by the criminal offense or compensate the damage caused; to fulfil due support obligations or other obligations established by a final court decision; to pay a specific amount of money for the benefit of a humanitarian organization, fund or public institution; to carry out a community service.

Implementation of these concepts has so far produced certain results in practice, especially with regard to plea agreement implementation in the recent period, after the establishment of the Special Public Prosecutor's Office. However, implementation of these concepts will be covered by a separate analysis within the framework of this Project.

2.2. Trial monitoring: Objectives and basic principles

There are numerous objectives and basic principles of programs aimed at monitoring judicial proceedings. Their methodology has, for the first time, been formulated and presented to the professional public through the publication "Trial Monitoring - A Reference Manual for Practitioners" developed by the OSCE.[8] This document identifies several objectives and basic principles of trial monitoring, including the following:

- ***Trial monitoring – a multifaceted tool.*** This objective puts particular emphasis on trial monitoring programs to serve as a multifaceted tool in the process of enhancing the effectiveness and transparency of judicial systems. In order to maximize the effectiveness of this tool, organizations should be aware of the different possibilities of trial monitoring and should design programmes that best suits the needs of a particular domestic context.
- ***Trial monitoring as a diagnostic tool in the judicial reform process.*** In line with the OSCE's experience in conducting trial monitoring programs, the collection and dissemination of objective information on judicial proceedings in individual cases, and drawing of conclusions regarding the broader functioning of the justice system is one of the key principles. As part of the trial monitoring program, organizations which conduct the monitoring activities, collect information about the practices and conditions under which judicial proceedings are conducted and judicial systems are developed, providing objective findings and conclusions to all participants in judicial proceedings. Defining recommendations and advocating their full implementation, through communication with the judicial authorities and all stakeholders in the judicial reform process, is recognized as the most important segment of the trial monitoring program.
- ***Exercising the right to a fair trial.*** The very act of monitoring trials is an essential expression of the right to a public trial and it increases the transparency of the judicial system. It is also one of the most important segments of the right to a fair trial, and by respecting it, the judicial systems send a message to citizens that courts and courtrooms are open to them and to be tried on their behalf. The presence of observers in courtrooms is in public interest. This is the basic starting point of all trial monitoring programs. Over time, trial monitoring programs contribute to raising awareness of the right to a public trial among the judiciary and other legal actors, enabling greater awareness and acceptance of international human rights and fair trial standards.

8 Trial Monitoring: A Reference Manual for Practitioners, revised edition 2012, available on: https:/www.osce.org/odihr/94216

» ***Capacity building vehicle.*** Trial monitoring can also be seen as a vehicle of capacity building and training of local NGOs and civil society organizations on international standards and domestic law. By hiring local lawyers as observers and legal advisers, the programs provide interested legal professionals with an opportunity to become indirectly involved in the legal reform process. The Partnership and Support Program for National Monitoring Groups also increases the capacity of interested local organizations and networks to engage in monitoring, independently or as partners in trial monitoring programs. In this way, programs can facilitate the creation of local trial monitoring capacities that will persist even after the completion of organization's program.

2.3. Basic principles of CeMI's trial monitoring programs

The principles of trial monitoring applied by the CeMI in its projects and activities are based on the principles developed in cooperation with the OSCE Mission to Montenegro, as part of the trial monitoring program, implemented in the period 2007-2014. In accordance with the methodology and principles of trial monitoring conducted in many European countries, CeMI and CEDEM observers have consistently applied the following principles for monitoring judicial proceedings within this Project: the principle of non-intervention in the judicial process, the principle of objectivity, the principle of agreement, along with specific limitations that trial monitoring programs entail, which will also be presented.

The principle of non-intervention in the judicial process is one of the basic principles underpinning trial monitoring programs. The principle of non-intervention arises from the fundamental rule that an independent judiciary is the ultimate authority responsible for maintaining the rule of law. This principle put particular emphasis on the importance of respecting the independence of the judiciary by trial observers, as well as the importance of avoiding any kind of interaction of the observer with judicial officials, since this can easily undermine the exclusive decision-making authority of the court. The application of the principle of non-intervention to all trial-monitoring activities is not always simple in practice. However, there is a general agreement that non-intervention stands for absence of engagement or interaction with the court regarding the merits of a case or attempt to indirectly influence the outcome through informal channels. That is why CeMI's trial-monitoring programs prohibit such interventions. It is very important to emphasize that adherence to this principle should not serve to limit public criticism of judicial authorities in charge of judicial proceedings. On the contrary, this principle essentially supports a critical approach by providing conclusions and recommendations aimed at promoting institutional reform.[9]

The principle of objectivity implies that trial-monitoring programmes provide accurate information on legal proceedings, using clearly defined and accepted standards, free of bias against parties or cases. According to this principle, when drafting reports with conclusions and recommendations, findings must be based upon knowledge of domestic law and international standards. Objectivity also implies a balanced approach to criminal justice proceedings and the recognition that the rule of law requires an efficient and fair system. To that end, trial monitoring is neither a supervisory nor a defence activity, but rather an activity that must show equal respect for all the rules and values governing criminal proceedings. While trial monitoring may sometimes be more focused on specific rules or standards, it should not give the impression of favouring one of the parties based on the merits of the charges or defence of crimes or cases. Therefore, the

9 See more: Trial Monitoring: A Reference Manual for Practitioners, Revised edition 2012, available on: https:/www.osce.org/odihr/94216

principle of objectivity requires a balanced approach to selection of trials within the programme, as well as s formulation of findings, conclusions and recommendations.[10]

Principle of agreement. OSCE, Council of Europe and European Union Member States have undertaken commitments to comply with a set of rules and basic principles in the administration of justice. The main obligation is to ensure the right to a fair and public trial within a reasonable time before an independent and impartial tribunal. In order to give effect to these and other commitments relating to fair trials, OSCE member states including Montenegro, agree to allow trial monitoring. In this context, at the operational level, trial monitoring programs are based on an agreed position with domestic judicial authorities, as the primary actors in the judicial reform process. The most significant challenge in practice is to raise awareness of judicial officials regarding judicial monitoring activities and achieve a common understanding with judicial authorities regarding the purpose and role of trial monitoring. Achieving this principle requires the following: entering into agreement, building working relationships, sharing information, explaining program goals and methods, making recommendations for improving judicial policies, and cooperating with judicial institutions to ensure a more efficient implementation of these recommendations.[11]

Certainly, judicial proceedings monitoring programs have their limitations. First of all, the purpose of trial monitoring programs is to analyse the level of fairness of justice in judicial proceedings, through the collection of information. If trial monitoring shifts its focus to observing procedures and only seeking to collect statistics or other data on different cases, the aim of trial monitoring will not be achieved. In seeking to provide reliable and high-quality information from judicial proceedings, trial observers should never lose focus from respecting procedural safeguards, with strict adherence to the principle of non-intervention in court proceedings. There are numerous challenges, and organizations implementing these programs need to be aware that persons hired as trial observers must have high professional qualifications, as well as a moral code based on the principles of reliability, integrity and conscientiousness.

2.4. Methodology

Trial monitoring activities are conducted in accordance with the OSCE methodology for monitoring court proceedings developed by the OSCE Mission to Montenegro and CeMI, as part of the trial monitoring program implemented in 2007-2014. In this section, it should be highlighted that one of the limitations of reporting on monitored criminal proceedings, was that the investigation phase and the pre-trial procedure were not monitored, except in situations where certain issues related to these stages of the trial, were mentioned during the main hearing. It should also be noted that CeMI and CEDEM's observers did not focus on the merits of the cases monitored, but rather examined whether the proceedings were conducted in accordance with international fair trial standards and relevant domestic legislation. In order to protect the rights of privacy and respect the independence of the courts, the names of the judges and parties to the proceedings are not stated in the Report.

2.4.1 Trial monitoring team

During the course of the implementation of the judicial proceedings monitoring activities, CeMI and CEDEM engaged legal advisers who directly carried out these activities.

10 Ibidem
11 Ibidem

The activities were conducted in teams of four when examining case files, and in teams of two, when attending main hearings.

Members of the trial monitoring team were trained in the initial phase of the program to monitor judicial proceedings, based on the methodology used by the OSCE trial monitoring programs. By implementing such trial monitoring projects, civil society organizations are strengthening their capacity to monitor judicial proceedings in a professional manner and in line with international standards.

2.4.2 Sample of the monitored trials

The monitoring activities covered criminal proceedings, through case files examination and attendance of the main hearing. The key method of monitoring was based on a random sample (when examining case files, it was used 100%), while targeted sample was always monitored by attendance of hearings, when the cases were attracting significant interest of the public, especially in cases of organized crime, corruption, terrorism, election crimes, crimes against the freedoms and human and citizens' rights, human trafficking and war crimes (attendance of the main hearing).

CeMI and CEDEM's observers monitored 642 cases during the course of the Project. In the first reporting period, 150 cases (263 main hearings) were monitored by attendance of the hearing, and the findings were presented within the aforementioned Report on the monitored trials for the previous year. In the second reporting period, 492 cases were monitored by case file examination in all the Basic Courts, as well as the High Courts Podgorica and Bijelo Polje.

The largest number of the monitored cases were prosecuted by the High Courts Podgorica (118 cases - 18.38%) and Bijelo Polje (41 cases - 6.39%), as well as the Basic Courts Podgorica (116 cases - 18.07 %) and Nikšić (44 cases - 6.85%). Case file examination was carried out in the cases for which final judgements were passed in 2016, 2017, 2018 and 2019.

Court	No. of cases monitored
Basic Court Bar	30
Basic Court Berane	30
Basic Court Bijelo Polje	31
Basic Court Danilovgrad	6
Basic Court Žabljak	20
Basic Court Kolašin	18
Basic Court Kotor	30
Basic Court Nikšić	44
Basic Court Plav	9
Basic Court Pljevlja	30
Basic Court Podgorica	116
Basic Court Rožaje	21
Basic Court Ulcinj	30
Basic Court Herceg Novi	30
Basic Court Cetinje	38
High Court Bijelo Polje	41
High Court Podgorica	118
TOTAL	**642**

Table 1: Overall number of cases monitored by attendance of the main hearing and case file examination

Out of the cases monitored by attending the main hearing, the highest number took place in the High Court Podgorica (71 cases - 47.33%).

Court	No. of cases monitored
Basic Court Bar	1
Basic Court Danilovgrad	1
Basic Court Nikšić	2
Basic Court Podgorica	67
Basic Court Cetinje	8
High Court Podgorica	71
TOTAL	**150**

Table 2: Overall number of cases by types of courts, monitored by attending the main hearing

Out of the cases monitored by case file examination, the majority took place in the Basic Court Podgorica (49 cases - 9.96%).

Court	No. of cases monitored
Basic Court Bar	29
Basic Court Berane	30
Basic Court Bijelo Polje	31
Basic Court Danilovgrad	5
Basic Court Žabljak	20
Basic Court Kolašin	18
Basic Court Kotor	30
Basic Court Nikšić	42
Basic Court Plav	9
Basic Court Pljevlja	30
Basic Court Podgorica	49
Basic Court Rožaje	21
Basic Court Ulcinj	30
Basic Court Herceg Novi	30
Basic Court Cetinje	30
High Court Bijelo Polje	41
High Court Podgorica	47
TOTAL	**492**

Table 3: Overall number of cases by types of courts, monitored by case file examination

2.4.3. Trial monitoring techniques

The observers did not focus on the merits of the monitored cases, but solely on whether the proceedings were conducted in line with international fair trial standards and relevant domestic legislation.

In addition to attending hearings, the observers also examined case files in criminal proceedings. In most situations, court presidents and court staff were open to cooperation, but there were also instances of lack of trust and understanding of the importance of the trial monitoring program.

In order to create a more complete picture of the case, when considered possible and

relevant, the observers interviewed relevant entities, in particular judges, prosecutors, lawyers and other participants in the proceedings.

During the trial monitoring, the observers filled a standardized questionnaire form and prepared individual reports on the cases monitored. The forms used when attending the main hearing contain basic questions about the participants in the proceedings, the offense, the length of the proceedings, the number of adjournments and the reasons thereof. On the other hand, the forms filled when examining the case files in the archives, contained many additional questions, due to the greater amount of information that was obtained by this type of monitoring. This difference will be clearly visible in the presentation of the findings from the monitored trials.

Forms and individual reports are the basis of this Report, which represents a systematized set of observations, with conclusions and recommendations.

III ANALYSIS OF COMPLIANCE WITH THE RIGHT TO A FAIR TRIAL IN CRIMINAL PROCEEDINGS – EFFICIENCY OF CRIMINAL PROCEEDINGS

Apart from this Report, the Centre for Monitoring and Research addressed the issue of the efficiency of criminal proceedings in the thematic Report on the right to a trial within a reasonable time, which has already been published. This Report presents findings on the extent to which the right to a trial within a reasonable time in Montenegro is respected. We will list only some of them.

1) It is the fact that an increasing number of cases are being resolved within the shorter period of time, and therefore the number of backlogged cases is decreasing. However, the efficiency rate declined during 2015 and 2016, despite the introduction of notaries in 2011 and public bailiffs in 2014. According to the Judicial Council Report for 2018, 38,971 cases from 2018 and from prior years remained unresolved. The report indicates that some cases initiated 10 years ago have not been resolved yet, of which 2807 cases were initiated between 2009 and 2015, and 541 cases before 2009.

2) Taking into consideration statistics relating to the number of unresolved cases in the courts, it can be noted that their number is in marked disproportion with the number of control requests and lawsuits requesting fair judgement, which is significantly lower than the overall number of backlog cases. It can be concluded that a small number of parties still use legal remedies to protect the right to a trial within a reasonable time. The reasons for the limited application of these mechanisms need to be analysed, and the awareness of the general public and parties to the proceedings of applying these legal mechanisms should be raised.

3) Results of the trial monitoring, used in this thematic Report, point to some issues which affect the requirement to complete trials within a reasonable time, such as lack of space in the courts, lack of respect for procedures by the parties involved, and problems with timely submission of the required paperwork. The length of the proceedings is further affected by the failure of expert witnesses to attend the court, or failure to submit the requested evidence and opinion within the set deadlines, as well as by requests for additional findings and opinion following objections by the parties. Some courts appear to have difficulties in applying the statutory mechanisms to prevent abuse of the rights of the parties in the proceedings, in an

effort to find a balance between protecting the rights of defendants and victims, and the need to ensure efficient criminal justice.

4)A significant indicator of the state of play in this area is the number of judgments passed by the European Court against Montenegro, of which almost half relate to the established violation of the right to a trial within a reasonable time and the related issue concerning the effectiveness of legal remedies for speeding up proceedings and fair judgement. Although the European Court's judgement found both remedies to be effective (control request of 4 September 2013 and lawsuit requesting fair judgement of 18 October 2016), the question of the effectiveness of legal remedies for the length of proceedings before administrative authorities and the Constitutional Court of Montenegro remains open, as stated in the latest annual report of the Representative of Montenegro before the European Court of Human Rights.[12] Based on the opinion of the European Court, the constitutional complaint has been an effective remedy in Montenegro since March 2015. When considering the number of unresolved cases, it can be noticed that this number has increased sharply within the Constitutional Court since 2015 (24 unresolved cases in 2015, 185 in 2016, 494 in 2017, up to 1789 in 2018). We already have proceedings before the European Court of Justice based on petitions against Montenegro, which highlighted violations of the right to a trial within a reasonable time before the Constitutional Court, without explicit view on the existence of effective remedies for the length of proceedings before the Constitutional Court. The same applies to the Administrative Court.

The information provided in this Report, as part of the analysis of the level of compliance with the right to a fair trial, is only a reflection of the case files examined by the team, which does not mean that some actions not outlined in the Report were not carried out, but only that it was not officially recorded by the trial monitoring program. However, ultimately, case files and records are a formal legal reflection of a process which is needed for the actions to be recognized as valid.

In most of the cases monitored, the charges concerned Illegal Possession of Weapons and Explosives (80 cases – 12.46%).

Criminal offense	Total
Giving false testimony	2
Forgery of a document	19
Forgery of an official document	2
Construction of building without registration and relevant paperwork	14
Causing general danger	7
Sharing personal and family circumstances	1
Extortion	2
Extortion of testimony	2
Theft	28
Attempted theft	1
Smuggling	2
Criminal association	1
Minor bodily harm	19
False reporting	3
Assault on an official while in duty	12
Searching apartment without a warrant	1

12 CeMI's Report on protection of the right to trial in a reasonable time – http:/cemi.org.me/product/zastita-prava-na-suden-je-u-razumnom-roku-analiza-nacionalnog-zakonodavstva-prakse/

Aggressive behaviour	16
Domestic violence	21
Incitement to authorise false information	14
Failure to provide support	20
Illegal border crossing and people smuggling	3
Illegal trade	18
Illegal sexual acts	1
Illegal possession of weapons and explosives	80
Unauthorized production, possession and placing on the market of narcotic drugs	63
Unauthorized exploitation of a copyright or related subject matter	1
Failure to report a crime and perpetrator	2
Unscrupulous work in service	4
Illegal fishing	7
Sexual abuse of a child	1
Keeping a minor away from their parents/guardians	3
Alienation of one's property	4
Confiscation of vehicles	1
Allowing drug use	2
Causing damage to creditor	1
Assistance to offender after they committed a crime	1
Special cases of document forgery	1
Grave devastation	1
Violation of social security rights	1
Violation of candidates' rights	1
Violation of equality	1
Money laundering	1
Fraud	9
Concealment	1
Coercion	1
Preparation of acts against the constitutional order and security of Montenegro	1
Stalking	1
Manufacturing and placing harmful products on the market	2
Embezzlement	2
Unlawful seizure of land	5
Forest devastation	1
Computer fraud	1
War crimes against civilians	1
Armed robbery	1
Robbery	6
Attempted robbery	1
Autocracy	1
Rape	3
Petty theft, evasion and fraud	1
Removal and violation of official seal and trademark	4

Voting prevention	2
Preventing an official from performing their duty	3
Creation of a criminal organization	10
Forest theft	9
Attempted terrorism	1
Serious acts against traffic safety	24
Serious acts against general security	3
Aggravated theft	21
Serious bodily harm	13
Serious act against electoral rights	2
Aggravated murder	13
Aggravated attempted murder	5
Murder	11
Manslaughter	1
Attempted murder	4
Participation in foreign military formations	1
Engaging in a fight	2
Endangering traffic safety	38
Jeopardizing by using dangerous items in a fight	3
Jeopardizing security	16
Destroying and damaging other people's objects	3
Evasion of tax and contributions	1
Extramarital union with a minor	1
Abuse of position in conducting the business	4
Misuse of trust	1
Missus of office	23
TOTAL	**642**

Table 4: Number of cases by type of criminal offense, monitored by attendance of the hearing and by case file examination

In most of the cases monitored by attendance of the main hearing, the charges concerned an unauthorized manufacturing, possession and placing narcotic drugs on the market of (17 cases - 11.33%).

Criminal offense	Total
Giving a false testimony	1
Forgery of documents	1
Sharing personal and family circumstances	1
Extortion	1
Theft	6
Criminal association	1
Minor bodily harm	5
False reporting	1
Assault on an official while in duty	1
Aggressive behaviour	6
Domestic violence	3

Failure to provide support	6
Illegal border crossing and people smuggling	1
Illicit trade	2
Illegal possession of weapons and explosives	12
Unauthorized production, possession and placing narcotic drugs on the market	17
Failure to report a crime and a perpetrator	1
Unscrupulous work in service	1
Illegal fishing	1
Assistance to offender after they committed a crime	1
Money laundering	1
Fraud	3
Preparation of acts against the constitutional order and security of Montenegro	1
Manufacturing and placing harmful products on the market	2
Forest devastation	1
Computer fraud	1
War crimes against civilians	1
Robbery	2
Rape	1
Petty theft, evasion and fraud	1
Voting prevention	2
Preventing an official from performing their duty	1
Criminal association	10
Terrorism	1
Serious acts against traffic safety	1
Aggravated theft	3
Serious bodily harm	3
Serious act against election rights	2
Aggravated murder	11
Murder	10
Manslaughter	1
Engaging in a fight	1
Endangering traffic safety	10
Jeopardizing security	1
Damaging and destroying other people's objects	1
Abuse of position in conducting the business	1
Misuse of office	8
TOTAL	**150**

Table 5: Number of cases by type of criminal offense, monitored by attendance of the main hearing

In most of the cases monitored by case file examination, the charges concerned illegal possession of weapons and explosives (68 cases – 10,59%).

Criminal offense	No. of monitored cases
Extramarital union with a minor	1
Construction of building without registration and relevant paperwork	14
Giving a false testimony	1
Abuse of position in conducting the business	3
Misuse of trust	1
Misuse of office	15
Causing general danger	7
Extortion	1
Extortion of testimony	2
Theft	23
Attempted theft	1
Smuggling	2
Criminal association	1
Minor bodily harm	14
False reporting	2
Assault on an official while in duty	11
Searching apartment without a warrant	1
Aggressive behaviour	10
Domestic violence	18
Incitement to authorise false information	14
Failure to provide support	14
Illegal border crossing and people smuggling	2
Illicit trade	16
Illegal sexual acts	1
Illegal possession of weapons and explosives	68
Unauthorized manufacturing, possession and placing of narcotic drugs on the market	46
Unauthorized exploitation of a copyright or related subject matter	1
Failure to report a crime and a perpetrator	1
Unscrupulous work in service	3
Illegal fishing	6
Sexual abuse of a child	1
Keeping a minor away from their parents/guardians	3
Alienation of one's property	4
Confiscation of vehicles	1
Allowing drug use	2
Causing damage to creditor	1
Special cases of document forgery	1
Grave devastation	1
Violation of social security rights	1
Violation of candidates' rights	1
Violation of equality	1
Fraud	6
Concealment	1

Coercion	1
Stalking	1
Embezzlement	2
Unlawful seizure of land	5
Armed robbery	1
Robbery	2
Attempted robbery	1
Autocracy	1
Rape	2
Removal and violation of official seal and trademark	4
Preventing an official from performing their duty	2
Forest theft	9
Serious acts against traffic safety	23
Serious crimes against general safety	3
Aggravated theft	18
Serious bodily harm	10
Aggravated murder	2
Aggravated attempted murder	5
Murder	1
Attempted murder	4
Participation in foreign armed formations	1
Engaging in a fight	1
Endangering traffic safety	28
Jeopardizing by using dangerous items in a fight	3
Security threats	15
Destroying and damaging other people's objects	2
Evasion of tax and contribution	1
Forgery of a document	18
Forgery of an official document	2
TOTAL	**492**

Table 6: Number of cases by type of criminal offense, monitored by case file examination

Based on the year when judgements became final and enforceable, **in most cases (66.05%)** monitored by CeMI and CEDEM's observers by case file examination, **the judgment became final and enforceable in 2019.**

Court	Year when the judgement became final				
	2016	2017	2018	2019	Total
Basic Court Bar		2	4	23	29
Basic Court Berane			1	29	30
Basic Court Bijelo Polje		2	3	26	31
Basic Court Danilovgrad				5	5
Basic Court Žabljak				20	20
Basic Court Kolašin	3	7	5	3	18
Basic Court Kotor				30	30
Basic Court Nikšić			17	25	42
Basic Court Plav	3	3	2	1	9
Basic Court Pljevlja				30	30
Basic Court Podgorica			8	41	49
Basic Court Rožaje		11	9	1	21
Basic Court Ulcinj	5	7	5	13	30
Basic Court Herceg Novi				30	30
Basic Court Cetinje	7	9	4	10	30
High Court Bijelo Polje			15	26	41
High Court Podgorica	6	15	14	12	47
Total	**24**	**56**	**87**	**325**	**492**

Table 7: Structure of cases monitored by case file examination, based on the year when the judgement became final, by types of courts

3.1 First instance proceedings

Regular criminal proceedings consist of the first instance criminal proceedings and proceedings based on remedy. The first instance criminal proceedings comprise two stages: the preliminary criminal proceedings and trial. Further, the stage of preliminary criminal proceedings consists of two phases: investigation and prosecution. Following the entry into force of the indictment, the preliminary proceedings stage ends and the trial begins, addressing the subject of the proceedings.[13] The main criminal proceedings consist of three parts: preparation of the main hearing, main hearing and passing of judgement[14].

During the case file examination in first instance proceedings, CeMI and CEDEM's observers filled forms with standardized questions covering: indictment review, scheduling of the main hearing, number of hearings held, right to public pronouncement of the judgement and average duration of the first instance proceedings.

The findings obtained are in line with the response structure, so for this reason this part of the report (first instance procedure) is divided into the five areas mentioned above.

13 Radulović, Drago, Criminal Procedural Law, University of Montenegro, Faculty of Law, Podgorica, 2009, p. 282

14 Grubač, Momčilo, Criminal Procedure Law, Official Gazette, Belgrade, 2006, p. 73; some use the phrase "adjudication, and pronouncing a judgement" instead of "passing" the judgement, see: Radulović, Drago, Criminal Procedural Law, University of Montenegro, Faculty of Law, Podgorica, 2009, p. 282

3.1.1. Indictment review

Most of the indictment cases were monitored in the High Courts Bijelo Polje (34) and Podgorica (47), but a smaller number of such cases were monitored in eight Basic Courts: Bar (3), Berane (3), Nikšić (4), Kolašin (2), Kotor (6), Podgorica (5), Rožaje (1), and Herceg Novi (3).

After receiving the indictment, president of the Council schedules a hearing to examine and review the legality and justification for the indictment. Prosecutor, defendant and defence lawyer are all summoned to the hearing, and it's brought to their attention that the hearing will take place in their absence if they fail to appear. A hearing will also take place when the summon could not have been served to their known address.

Having verified that all the summoned persons have appeared and that they have received the summons, president of the Council opens the hearing and presents the indictment before the court for review and approval. Prosecutor presents evidence for the indictment, and defendant and their defence lawyer can point to omissions made in the investigation or to an unlawful evidence, or the lack of evidence for reasonable doubt that the defendant committed the criminal offense charged with, as well as to point to evidence in defendant's favour.

When the court finds that there are errors or shortfalls in the indictment or in the very proceedings, or identifies the need to review the justification of the indictment for a better clarification of the state of affairs, it will return the indictment in order to address the noted shortfalls or in order for the investigation to be to supplemented or carried out. The prosecutor has to file a revised indictment within three days from the date when they received the court decision, or complete or conduct the investigation within two months. For justified reasons, at the request of the prosecutor, this time limit may be extended. If the public prosecutor fails to meet the deadline, they are obliged to directly inform the High Public Prosecutor's Office regarding the reasons. If the injured party as accuser misses the above deadline, it will be considered that they have dropped the charges, and the procedure will be halted.

If further clarification is required to examine the justification of the indictment of the injured party as accuser, the court will refer the indictment to the investigating judge, in order to gather evidence within two months.

The deadline for scheduling indictment review hearing is 15 days following the receipt of the indictment (Article 293, paragraph 3 of the CPC). Of the cases monitored by case file examination, **the deadline for reviewing the indictment was met in 86 (79.63%) cases, and not met in 22 (20.37%)** monitored cases.

However, there are some cases in both the High and the Basic Courts, where deadline was significantly exceeded. It should also be noted that the deadline for reviewing the indictment was more often met in the High Courts than in the Basic Courts.

The longest time by which the statutory time limit for scheduling the indictment review hearings, in cases monitored by case file examination in the High Court Bijelo Polje was exceeded, was **49 days following the receipt of the indictment**, and it occurred in two cases (K Nos. 54/18 and K no. 55/18). Overall, the **statutory deadline was met** in **85.29%** of the cases, while in **14.71%** of cases **this deadline was not met**.

The longest time by which the statutory time limit for scheduling the indictment review hearings, in cases monitored by case file examination in the High Court Podgorica was exceeded, was **63 days following the receipt of the indictment** (K No. 1/16). Overall, the **statutory deadline was met** in **82.98%** of cases, while in **17.02%** of cases **this deadline was not met**.

The longest time by which the statutory time limit for scheduling the indictment review hearings, in cases monitored by case file examination in the Basic Courts was exceeded,

was **273 days following the receipt of the indictment** (in the Basic Court Herceg Novi, No. 36/18). Overall, **the statutory deadline was met** in **66.67%** of cases before the Basic Courts, while in **33.33%** of cases this **deadline was not met**.

Court	No. of indictments	Deadline for indictment review (average)
High Court Bijelo Polje	34	15
High Court Podgorica	47	16[15]
Basic Courts (8)	27	24
Basic Court Bar	3	4
Basic Court Berane	3	22
Basic Court Nikšić	4	14
Basic Court Kolašin	2	23
Basic Court Kotor	6	4
Basic Court Podgorica	5	9
Basic Court Rožaje	1	13
Basic Court Herceg Novi	3	98
Total	**108**	**19**

Table 8: Overview of the cases monitored by case file examination, based on the number of indictments and deadline for its review, by types of courts

With regard to the presence of prosecutor, defendant and defence lawyer at the **hearings for indictment review** in the cases monitored by case file examination, it could be noticed that in the High Courts Bijelo Polje and Podgorica, defendant and defence lawyers attended the aforementioned hearings more often than prosecutors. In the case of the Basic Courts, prosecutors attended the hearings more often than defence lawyers and defendants.

Out of a total of 34 indictment cases in the High Court Bijelo Polje, prosecutors attended the hearings in **23.53%**, defendants in **67.65%** and their defence lawyers in **58.82%** of the cases.

Out of a total of 47 indictment cases in the High Court Podgorica, prosecutors attended the hearing in **46.81%,** defendants in **46.81%** and their defence lawyers in **51.06%** of the cases.

Out of a total of 27 indictment cases in the Basic Courts, prosecutors attended the hearings in **72.22%**, defendants in **53.33%** and their defence lawyers in **37.50%** of the cases.

There were **no cases** in the High and Basic Courts of the indictment being returned to the prosecutor for amendments.

The deadline for confirming the indictment is eight days, and in complex cases 15 days following the day when the hearing for indictment review took place (Article 296 paragraph 1 of the CPC). The analysis of the monitored cases showed that this **deadline was met in the High Courts Bijelo Polje and Podgorica, but not in the Basic Courts**, where the indictment cases were monitored (Bar, Nikšić, Kolašin, Kotor, Podgorica, Rožaje, Herceg Novi), except in the Basic Court Berane.

15 Breach of deadline is marked in red in the tables

In all the cases prosecuted in the High Court Bijelo Polje, which were monitored by case file examination, the decision to confirm the indictment was issued on the same day when the hearing took place.

The longest time by which the statutory deadline for the confirmation of the indictment, in the cases monitored by case file examination before the High Court Podgorica was exceeded, was **29 days after the indictment review hearing** (K no. 29/17). Overall, **the statutory deadline was met in 95.74%** of cases, while **this deadline was not met** in **4.26%** of cases.

The longest time by which the statutory deadline for the confirmation of the indictment in the cases monitored by examining the case files before the eight Basic Courts (Bar, Berane, Nikšić, Kolašin, Kotor, Podgorica, Rožaje, Herceg Novi) was exceeded, was **98 days after the indictment review hearing** (Basic Court Herceg Novi, K No. 48/18). Overall, **the statutory deadline was met** in **33.33%** of cases, while in **66.67%** of cases this **deadline was not met**.

Court	No. of Indictments	Time line in which the decision on confirmation of indictment was issued, expressed in days (average)
High Court Bijelo Polje	34	On the same day
High Court Podgorica	47	4
Basic Courts (8)	27	42
Basic Court Bar	3	21
Basic Court Berane	3	15
Basic Court Nikšić	4	21
Basic Court Kolašin	2	60
Basic Court Kotor	6	39
Basic Court Podgorica	5	36
Basic Court Rožaje	1	18
Basic Court Herceg Novi	3	63
Total	**108**	**11**

Table 9: Overview of cases monitored by case file examination based on the number of indictments, and timeline in which decision for confirmation of indictment was issued, by types of courts

Since it was not possible to identify methodology for determining the degree of complexity of each monitored case, the above information refers to breaches of deadline of 15 days, which is the longest time allowed for the most complex cases. Despite the fact that compliance with the longest statutory deadline of 15 days was analysed in case of the Basic Courts, it was found that this deadline was exceeded in **66.67%**, which represents a significant percentage.

3.1.2. Main hearing

The main hearing is the second phase of the main criminal proceedings. President of the Council is in charge of conducting the main hearing, examining defendant, witnesses and expert witnesses, and giving the floor to members of the Council, parties to the proceedings, injured party, legal representatives, those with a power of attorney, defence lawyers and expert witnesses.

The parties have the right to object during the presentation of evidence. President of the Council decides on the proposals and objections of the parties in the proceedings, unless this is done by the Council. The Council decides on both proposals where the consent of the sides involved was not reached, and those where the consent was reached, but were not adopted by president. The Council also decides on the objections against the measures imposed by president of the Council, concerning the conducting of the main hearing.

It is the duty of the Council's president to ensure the comprehensive examination of the case, of establishing the truth, and of eliminating anything that causes delays to the proceedings and does not serve to resolving the case.

The course of the main hearing is determined by the CPC, but the Council can change it in special circumstances, and in particular when the number of defendants, the number of crimes or the volume of evidence is high.

The court is obliged to protect its reputation, the reputation of the parties involved and other participants in the proceedings against slander, threat and any other kind of attack. President of the Council has duty to maintain order in the courtroom. They can order the search of persons attending the main hearing and immediately after the opening of the session they can request that those present behave appropriately and not obstruct the work of the court. The Council may order removal from the session of all those attending the main hearing as audience, if the legal measures for keeping order provided for in this Code could not ensure that hearing is carried out without obstructions.

Audio and audio-visual equipment cannot be brought into the courtroom unless approved by president of the Supreme Court for a specific trial. If recording is approved at the main hearing, the Council may, for justified reasons, issue a decision prohibiting the recording of some parts of the hearing.

At the main hearing, CeMI and CEDEM's observers analysed the following features: the scheduling of the main hearing, the preliminary hearing, the number of hearings held, the number of adjourned hearings, the reasons for the adjournment, the reasons for the interruption, the publication of the judgment, the delivery of the judgment, the average length of the second instance proceedings and the average length of the proceedings.[16]

Pursuant to Article 304 paragraph 2 of the CPC, **the president of the Council will order a main hearing no later than two months after the indictment is confirmed**. If they fail to set a main hearing within this time limit, the Council president will inform the Court president of the reasons thereof. The Court president shall, where appropriate, take steps to ensure that the main hearing is scheduled.

The statutory **time limit was met in all cases, except in the Basic Court Herceg Novi**. However, it should be noted that there were some examples of significant breach of deadline. For example, in the High Court Podgorica, in case K no. 46/18, the main hearing was scheduled 140 days after the indictment was confirmed.

Court	Period in which main hearing was scheduled, measured in days (average)
High Court Bijelo Polje	34
High Court Podgorica	54

16 As previously mentioned, a limiting factor for conducting a full analysis in the Basic Court Podgorica, is the fact that 48 of 49 cases examined, were cases in which a plea agreement was concluded, which affects the quality of the analysis of the Court's respect for time limits.

Basic Courts (8)	40
Basic Court Bar	55
Basic Court Berane	25
Basic Court Nikšić	22
Basic Court Kolašin	55
Basic Court Kotor	48
Basic Court Podgorica	34
Basic Court Rožaje	14
Basic Court Herceg Novi	65
Total	**43**

Table 10: Overview of indictment cases monitored by case file examination, by period in which the main hearing was scheduled, by types of courts

The time line for scheduling the main hearing for bills of indictment is shorter. Namely, according to Article 451 paragraph 4 of the CPC, if the main hearing is not scheduled **within 30 days from the date of receipt of the indictment** or a lawsuit, the judge is obliged to inform the president of the Court of the reasons, so that they can take measures to schedule the main hearing as soon as possible.

Of those cases monitored, six Basic Courts met the statutory deadline **and nine Basic Courts failed to do so**.

Court	Period in which main hearing was scheduled, measured in days (average)
Basic Court Bar	46
Basic Court Berane	36
Basic Court Bijelo Polje	33
Basic Court Cetinje	29
Basic Court Danilovgrad	64
Basic Court Herceg Novi	58
Basic Court Kolaši	105
Basic Court Kotor	43
Basic Court Nikšić	23
Basic Court Plav	26
Basic Court Pljevlja	25
Basic Court Podgorica	39
Basic Court Rožaje	3
Basic Court Žabljak	21
Basic Court Ulcinj	31
Total	**39**

Table 11: Overview of indictment cases monitored by case file examination, by period in which the main hearing was scheduled, by types of courts

Preliminary hearing is governed by Article 305 of the CPC. If deemed necessary to determine the future course of the main hearing and to plan what evidence will be presented at the main hearing, how and when, president of the Council shall, within two months, summon parties,

defence lawyers, injured party, those granted the power of attorney by injured party, as well as witness experts and other people, if needed, to attend preliminary hearing. President of the Council is obliged to inform those present about the planned course of the main hearing and request that they present their opinion on the issue, as well as to present their proposed evidence and, in particular, specify whether they are able to respond to the court summons and attend the main hearing at specified days and time, as scheduled by the president of the Council. The parties are specifically advised at the hearing to present their proposed evidence at the preliminary hearing. They are also informed that, in case they present the new evidence at the main hearing, they will have to explain in detail why they failed do so at the preparatory hearing, as well as that the court will reject these proposals if the parties do not prove that at the time of the preliminary hearing they were not aware or could not have been aware of the evidence or facts that need to be proven.

Of 109 indictment cases monitored, a **preliminary hearing** was held **in three cases** (Basic Court Nikšić - 2/19, Basic Court Herceg Novi - 103/18, High Court Bijelo Polje - 55/18), which questions the purpose of its introduction into the criminal legislation of Montenegro. Prosecutor and defence lawyer attended the preliminary hearing in all three cases, while defendant attended the preliminary hearing in two of the three cases (Basic Court in Herceg Novi - 103/18, Higher Court in Bijelo Polje - 55/18). In all cases, president of the Council briefed those present on the planned course of the main hearing and requested that they present their opinion on the issue, as well as to present their proposed evidence and, in particular, state whether they are able to respond to the court summons and attend the main hearing on days and times determined by president of the Council.

3.1.3. Hearings within the main hearing

A total number of hearings within 492 cases monitored in the High and Basic Courts was **1347.** Of this number, **804 (59.69%)** hearings were held and **795 (59.02%)** were adjourned.[17]

The analysis of the case showed **that the number of hearings adjourned in the six Basic Courts was higher than the number of hearings held** (Bar, Berane, Bijelo Polje, Kolašin, Kotor, Nikšić).

Court	Numbers of hearings held	Percentage of hearings held	Number of hearings adjourned	Percentage of hearings adjourned
Basic Court Bar	72	48,32%	110	73,82%
Basic Court Berane	46	52,27%	57	64,77%
Basic Court Bijelo Polje	63	77,77%	50	61,73%
Basic Court Danilovgrad	7	77,77%	4	44,44%
Basic Court Žabljak	23	76,67%	9	30%
Basic Court Kolašin	29	49,15%	42	71,19%
Basic Court Kotor	89	47,59%	166	88,77%
Basic Court Nikšić	59	55,14%	68	63,55%
Basic Court Plav	17	89,47%	6	31,58%
Basic Court Pljevlja	37	68,52%	24	44,44%

17 The overall percentage of the hearings held and adjourned is over 100%, because there is also a "held-adjourned" category which implies that certain actions were carried out at the hearing, but the hearing was postponed because conditions were not fulfilled for all the planned actions to be carried out.

Basic Court Podgorica	80	67,23%	41	34,45%
Basic Court Rožaje	29	100%	2	6,90%
Basic Court Ulcinj	37	84,09%	13	29,55%
Basic Court Herceg Novi	46	42,20%	71	65,14%
Basic Court Cetinje	37	64,91%	24	42,11%
High Court Bijelo Polje	63	58,88%	62	57,94%
High Court Podgorica	70	70,71%	40	40,40%
TOTAL	**804**	**59,69%**	**795**	**59,02%**

Table 12: Overview of cases monitored by case file examination based on the number and percentage of the adjourned and held hearings, by types of courts

Based on the information presented in the table, it can be noted that **the number of adjourned hearings is higher in the Basic Courts than in the High Courts**. For the sake of accuracy, of the overall number of hearings in these Courts, 58.76% were held in the Basic Courts, while 60.68% were adjourned. Furthermore, 64.56% of hearings were held in the High Courts, while 49.51% were adjourned.

Measured in days, the average length of adjournment is the highest in Herceg Novi (45 days) and the lowest in Rožaje (11 days). There is a significant difference between the Courts in the length of adjournment measured in days. In addition, it can be noticed that, given the reasons for delay, which will follow in this Report, the duration of the delay is not optimal and does not comply with the deadline set out in Article 311.

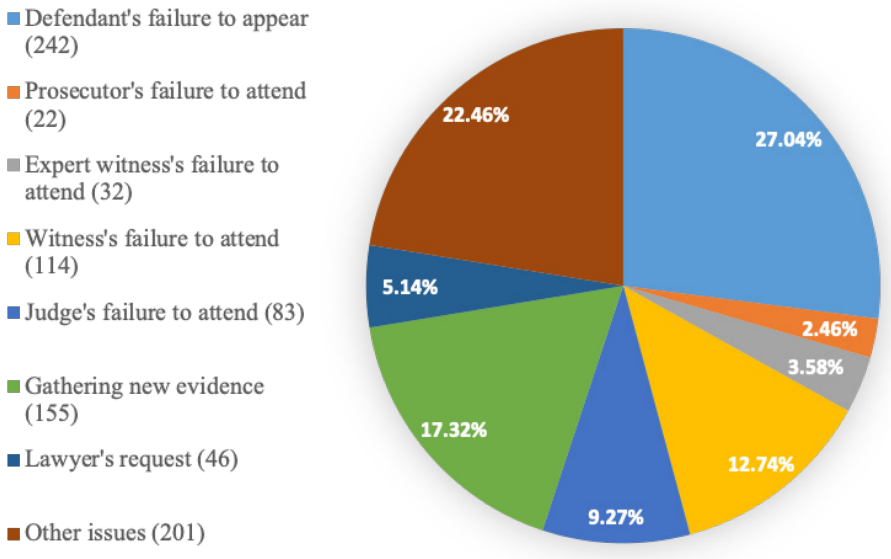
Court	Number of cases monitored	Number of adjourned hearings in the monitored cases	Average duration of adjournment measured by days
Basic Court Bar	29	110	31
Basic Court Berane	30	57	26
Basic Court Bijelo Polje	31	50	30
Basic Court Danilovgrad	5	4	30
Basic Court Žabljak	20	9	12
Basic Court Kolašin	18	42	37
Basic Court Kotor	30	166	34
Basic Court Nikšić	42	68	17
Basic Court Plav	9	6	12
Basic Court Pljevlja	30	24	25
Basic Court Podgorica	49	41	24
Basic Court Rožaje	21	2	11
Basic Court Ulcinj	30	13	14
Basic Court Herceg Novi	30	71	45
Basic Court Cetinje	30	24	17
High Court Bijelo Polje	41	62	23
High Court Podgorica	47	40	31
Total	**492**	**795**	**25**

Table 13: Overview of cases monitored by case file examination, based on the average length of the adjournment measured in days, by types of courts

In accordance with the CPC (Article 311, Article 324 paragraph 1, Article 325 paragraph 1 and Article 328 paragraph 1), **the reasons for adjournment** are the following: failure of defendant to appear, failure of defence lawyer to attend the court, if the parties and their defence lawyer have a well-founded reasons or *ex officio*, gathering new evidence, and if it is established in the course of the main hearing that the defendant has experienced a temporary mental disorder after committing the crime, and if there are other obstacles to successful completion of the main hearing.

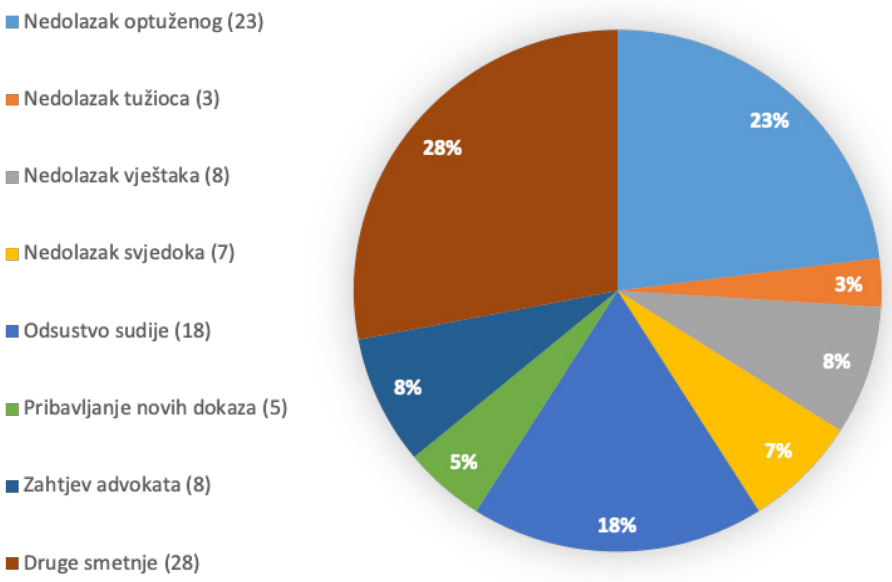
The most common reason for adjournment of hearings within the cases monitored by attendance of the main hearing and case file examination is **the failure of defendant to attend – 242 cases (27.04%)**. This information is consistent with the information obtained during the first reporting period, when it was determined by the second monitoring method (attendance of the hearing) that the failure of defendant to attend was the most common reason for adjournment.

Apart from this, the most common reasons identified in this analysis are other issues, gathering of the new evidence and failure of witnesses to attend. The most common other issues are: negotiating an agreement, a prominent desire of defendant to hire a (new) defence lawyer, administrative error and delays in delivery, extensive workload of officers of the Security Centre and the absence of the injured party. Taking into account the nature of these reasons, we can conclude that the more frequent use of the preliminary hearing could reduce the number of adjournments and enable better planning of the course of the main hearing.



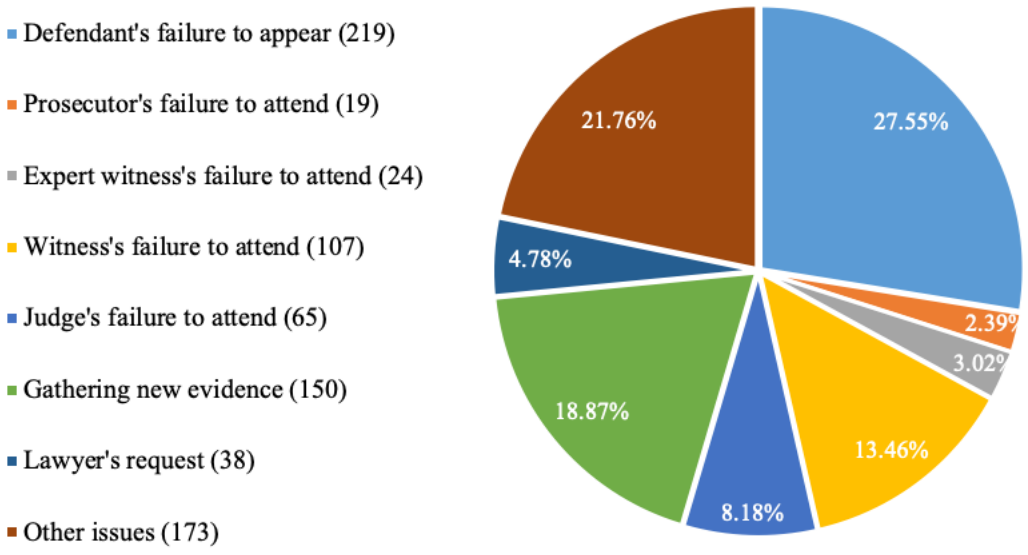
Graphic presentation 1: Reasons for adjournment in cases monitored by attendance of the hearing and case file examination

In cases monitored by attendance at the main hearing, the most common reason for the adjournment **was other issues (28 cases, 28%)**. Additional reasons include: defendant's failure to appear, absence of a judge, request of a lawyer and absence of an expert witness.



Graphic presentation 2: Reasons for adjournment in cases monitored by case file examination

In cases monitored by case file examination, the most common reason for adjournment was **defendant's failure to appear (219 cases – 27.55%)**. Additional reasons include: prosecutor's failure to attend, gathering of new evidence, and witness's failure of to attend the hearing.



Graphic presentation 3: Reasons for adjournments in cases monitored by case file examination

The reasons for interruption under the CPC (Article 330 paragraph 1) are: recess or end of working day, gathering certain evidence in a short time or preparing prosecution or defence.

Out of 492 monitored cases, **7 cases were interrupted** during the main hearing in the Basic Courts Berane, Cetinje, Kotor and Nikšić. The most common reason for interrupting the hearing was **preparation of defence (4 cases)**. Additional reasons included **gathering of evidence (2 cases)** and **inability to establish the identity of the person who presented themselves as defendant (1 case)**.

Court	Number of cases monitored	No. of cases with interrupted hearings	Number of hearings interrupted	Percentage of hearings adjourned	Length of interruption expressed in days
Basic Court Berane	30	1	1	1.14%	3
Basic Court Kotor	30	2	4	2.14%	3
Basic Court Nikšić	42	3	3	2.80%	5
Basic Court Cetinje	30	1	1	1.75%	2

Table 14: Overview of the cases monitored by case file examination by number, percentage share and duration of interruptions, by types of courts

During the monitoring, observes noted that, in situations when judges faced the option of interruption and adjournment, they would opt for adjournment. For example, three cases (two in Bar - 274/16 and 129/16, one in Nikšić - 107/19) were adjourned for less than 8 days due to gathering new evidence.

Procedural discipline measures are governed by Articles 324, 325 and 327 of the CPC. As part of trial monitoring by case file examination, the observers noted more frequent use of forced takein, compared to imposing fines, unlike in the first reporting period, when expert witness was fined in one case monitored by attendance of the hearing.

In total, 45 procedural discipline measures concerning "forced takein" were imposed, most of them in the Basic Court Kotor and the High Court Bijelo Polje (9). Taking into account the graphic above, which shows that the failure of defendants, witnesses and expert witnesses to appear are cumulatively the reasons for adjournment in 44.03% of cases, it can be concluded that the courts should make more use of procedural discipline measures.

Court	Number of cases monitored	Number of imposed procedural discipline measures concerning "forced takein"
Basic Court Bar	29	4
Basic Court Berane	30	5
Basic Court Bijelo Polje	31	2
Basic Court Danilovgrad	5	0
Basic Court Žabljak	20	1
Basic Court Kolašin	18	3
Basic Court Kotor	30	9
Basic Court Nikšić	42	3
Basic Court Plav	9	0
Basic Court Pljevlja	30	1
Basic Court Podgorica	49	1
Basic Court Rožaje	21	1
Basic Court Ulcinj	30	0
Basic Court Herceg Novi	30	2
Basic Court Cetinje	30	1

High Court Bijelo Polje	41	9
High Court Podgorica	47	3
Total	**492**	**45**

Table 15: Overview of cases monitored by case file examination, based on the number of imposed procedural disciplinary measures concerning "forced takein", by types of courts

3.1.4. Right to public pronouncement of judgment

Pronouncement of judgement is regulated by Article 375, paragraph 2 of the CPC: **"If the court is unable to pronounce the judgment on the same day after the end of the main hearing, it will be postponed for a maximum of three days, and a new time and place for pronouncing a judgement will be determined**. If the judgment is not pronounced within three days following the termination of the main hearing, president of the Council will inform president of the Court about that immediately after the expiry of the time limit and of the reasons thereof".

Within the analysed cases which took place in the Basic Courts Bar, Berane, Bijelo Polje, Danilovgrad, Žabljak, Plav, Pljevlja, Podgorica, Rožaje, Ulcinj and Herceg Novi, all judgements were delivered within the statutory time limit. On the other hand, in the Basic Courts Cetinje, Kolašin, Kotor and Nikšić, as well as in the High Courts Bijelo Polje and Podgorica, there were instances when the judgement was not pronounced within the statutory time limit. **Of the total of 492 cases monitored, the deadline for the publication of the judgment was not met in 23 cases.**

Court	Number of cases monitored	Number of cases in which the judgment was not pronounced within the statutory time limit
Basic Court Cetinje	30	2
Basic Court Kolašin	18	1
Basic Court Kotor	30	1
Basic Court Nikšić	42	2
High Court Bijelo Polje	41	4
High Court Podgorica	47	13

Table 16: Overview of cases monitored by case file examinations, by total number and number of cases in which the judgment was not delivered within the statutory time limit, by types of courts

Delivery of judgment is governed by Article 378 of the CPC: "The judgment that has been pronounced must be presented in writing and delivered **within one month of its publication,** and **in complex cases exceptionally within 2 months**. In case the judgement is not delivered within this deadline, president of the Council is obliged to inform president of the court in writing about the reasons. President of the court will take steps to ensure that the judgment is drafted as soon as possible".

The deadline for delivery of the written judgement was exceeded in even fewer number of cases than when pronouncing the judgement, i.e. **in 10 of the 492 cases analysed**. The Basic Courts Nikšić, Herceg Novi, Cetinje and the High Court Podgorica each had one overdue case, while the High Court Bijelo Polje and the Basic Court Bijelo Polje had three such cases each.

Since it was not possible to identify methodology for determining the degree of complexity of each monitored case, the above information refers to breaches of deadline of two months, which is the longest time allowed for the complex cases.

3.2 SECOND INSTANCE PROCEEDINGS

The judgment may be challenged if the following actions take place:

1) significant violations of the provisions of the criminal proceedings;

2) violations of the Criminal Code;

3) facts of the case were incomplete or inaccurate;

4) decisions on criminal sanctions, confiscation of property gain, costs of criminal proceedings, property claims. (Article 385 CPC).

In the second instance proceedings, decisions can be made in a session of the Council or at a hearing. A hearing will be held "only if it is necessary, due to an incorrect or incomplete case facts, in order to present new evidence or to repeat previously presented evidence and if there are reasonable grounds not to return the case to first-instance court for retrial" (Article 395 paragraph 1 of the CPC).

The total number of analysed cases in which the second instance proceedings were held is 113. Most of them took place in the High Courts (28 in Bijelo Polje and 14 in Podgorica). Regarding the Basic Courts, the greatest number of second instance proceedings took place in Berane (10).

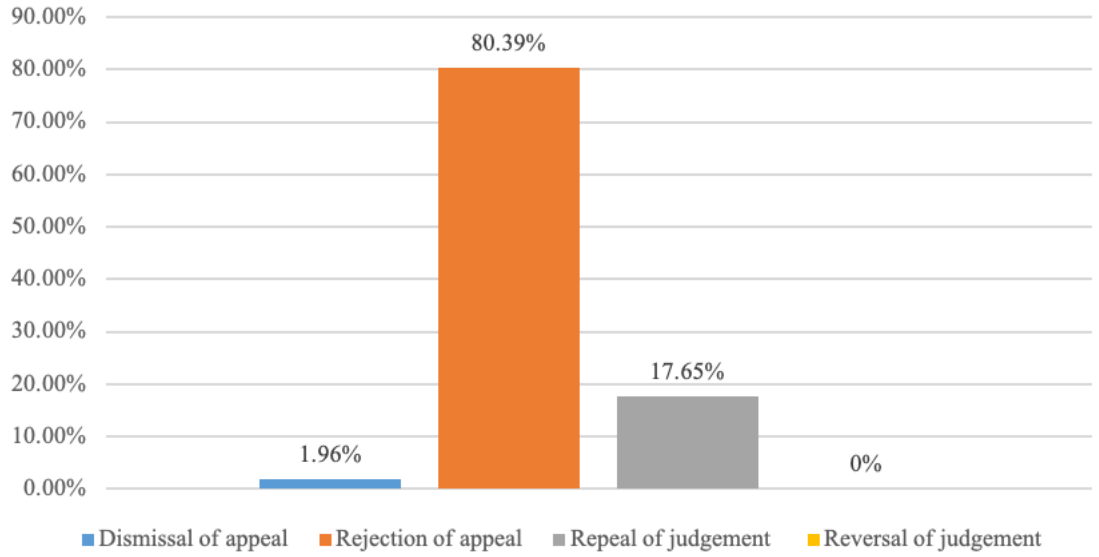
Court	Number of cases monitored	Number of second instance cases
Basic Court Bar	29	7
Basic Court Berane	30	10
Basic Court Bijelo Polje	31	7
Basic Court Danilovgrad	5	1
Basic Court Žabljak	20	4
Basic Court Kolašin	18	5
Basic Court Kotor	30	9
Basic Court Nikšić	42	8
Basic Court Plav	9	3
Basic Court Pljevlja	30	4
Basic Court Podgorica	49	0
Basic Court Rožaje	21	6
Basic Court Ulcinj	30	1
Basic Court Herceg Novi	30	3
Basic Court Cetinje	30	3
High Court Bijelo Polje	41	28
High Court Podgorica	47	14

Table 17: Overview of cases monitored by case file examination, by number of second instance proceedings, by types of courts

In **all the monitored cases** in which the second instance proceedings were conducted, the decision was made in the Council session.

The second instance proceedings on appeals against the Basic Courts' judgement lasted 60 days on average, and 69 days in cases of the appeal against decisions of the High Courts.

The most prevalent decision in the second instance proceedings was **rejection of appeal** (80.39%).



Graphical presentation 4: Overview of types of decisions issued in second instance proceedings in percentage, in cases monitored by case file examination

Within the cases analysed, no **extraordinary remedy was filed.**

3.3. AVERAGE DURATION OF THE PROCEEDINGS

International standards **do not define the exact length of a reasonable time**, in terms of the specific timeframe for completing the proceedings; instead, **criteria are given to determine if something constitutes reasonable time in each particular case**. In this respect, the European Court generally uses the following wording: "the reasonableness of the length of proceedings is to be assessed on the basis of the circumstances of the case and having regard to the criteria laid down by the Court's case-law, in particular the complexity of the case, the conduct of the applicant and the conduct of the relevant authorities".

Based on the analysed cases, it can be concluded **that on average, the proceedings lasted the longest** in cases monitored **in the Basic Court Kotor (324 days) and the Basic Court Bar (229 days)**. On the other hand, based on the analysed cases, the **proceedings lasted the shortest in Žabljak (55 days) and Ulcinj (53 days)**. The proceedings lasted an average of **119 days** in the **Basic Courts** and **184 days** in the **High Courts**.

Court	Number of cases monitored	Number of second instance cases	Average length of proceedings measured in days
Basic Court Bar	29	7	229
Basic Court Berane	30	10	142
Basic Court Bijelo Polje	31	7	114
Basic Court Danilovgrad	5	1	47
Basic Court Žabljak	20	4	55
Basic Court Kolašin	18	5	187
Basic Court Kotor	30	9	324
Basic Court Nikšić	42	8	126
Basic Court Plav	9	3	88
Basic Court Pljevla	30	4	95
Basic Court Podgorica	49	0	93
Basic Court Rožaje	21	6	58
Basic Court Ulcinj	30	1	53
Basic Court Herceg Novi	30	3	134
Basic Court Cetinje	30	3	71
High Court Bijelo Polje	41	28	227
High Court Podgorica	47	14	152

Table 18: Overview of cases monitored by case file examination, by the average length of the proceedings (from indictment to final judgement), by types of courts

Within the analysed cases, there were no cases in which the defendant used the remedy provided for by the Law on the Protection of the Right to a Trial within a Reasonable Time (Control Request).

3.4 DETENTION

In accordance with Article 9(1) of the International Covenant on Civil and Political Rights, "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law".

Rule 6 of the UN Standard Minimum Rules on Non-Custodial Measures (the Tokyo Rules) provides that "Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim".

Article 5 of the European Conventions guarantees the right to liberty and security of person to everyone, stating six cases when a person can be deprived of liberty. Specifically, the European Convention does not prescribe the reasons for which detention was ordered, but states the exemption from rights to liberty, which are explicitly stated in Article 5 of the European Convention.

When deciding on detention, one of the conditions that must be fulfilled is **reasonable doubt** that a person committed a crime, which certainly implies a necessary justification,

as well as reasonable grounds for suspicion to be stated. Likewise, the European Court considers that reasonable doubt is only one of the requirements for detention, and that in addition, "justified and valid" reasons of public interest must exist, in order to support further deprivation of liberty of persons presumed innocent. The European Court has established four such grounds, including:

- risk of escape; [18]
- obstruction of the course of proceedings; [19]
- risk of repeated offence; [20]
- keeping a public order; [21]

While monitoring trials, the following items were considered regarding the custody: percentage of detention punishments, number of detained hearings in custody cases, length of detention during investigations, duration of detention after the indictment was filed, average duration of detention in the overall proceeding, as well as cases in which plea agreement was reached and detention was ordered.

Court	Number of cases monitored	Number of detention cases	Percentage of detention cases
Basic Court Bar	29	2	6.90%
Basic Court Berane	30	0	0.00%
Basic Court Bijelo Polje	31	2	6.45%
Basic Court Danilovgrad	5	0	0.00%
Basic Court Žabljak	20	1	5.00%
Basic Court Kolašin	18	0	0.00%
Basic Court Kotor	30	3	10.00%
Basic Court Nikšić	42	3	7.14%
Basic Court Plav	9	2	22.22%
Basic Court Pljevlja	30	0	0.00%
Basic Court Podgorica	49	21	42.86%
Basic Court Rožaje	21	0	0.00%
Basic Court Ulcinj	30	0	0.00%
Basic Court Herceg Novi	30	1	3.33%
Basic Court Cetinje	30	1	3.33%
High Court Bijelo Polje	41	22	53.66%
High Court Podgorica	47	25	53.19%
Total	**492**	**83**	**16.87%**

Table 19: Number and percentage of detention cases monitored by case file examination, by types of courts

The grounds for deprivation of liberty laid down by the European Court are also provided for in the **CPC**. Where there is a reasonable doubt that a person has committed a criminal offense, **detention may be imposed against them in the following cases**: 1) if they are hiding or

18 *Muller v. France*, judgement of 17 March 1997
19 *Wemhoff v. Njemačke*, judgement of 27 June 1968
20 *Toth v. Austrije*, judgement of 12 December 1991
21 *Romanov v. Russia*, judgement of 20 December 2005

their identity cannot be confirmed, or if there are other circumstances that indicate a risk of escape (Article 175 paragraph 1 item 1); 2) of there are circumstances that indicate that they will destroy, conceal, alter or forge evidence of the crime or that they will interfere with the procedure by influencing witnesses, accomplices or those concealing the crime (Article 175 paragraph 1 item 2); 3) that there are circumstances which indicate that they will repeat the criminal offense or complete the attempted criminal offense or that they will commit the criminal offense they threaten with (Article 175 paragraph 1 item 3); 4) detention is necessary for the unobstructed running of the proceedings, which concern a criminal offense liable to a term of imprisonment of ten years or even more severe punishment, due to the manner of its execution or its consequences which make the offense particularly serious (Article 175 paragraph 1 item 4) and 5) the duly summoned defendant avoids to appear at the main hearing (Article 175 paragraph 1 item 5).

In cases where summary proceedings are conducted, detention may be ordered in the following situations: 1) if they are hiding, or their identity cannot be established, or there are other circumstances which clearly indicate a risk of escape (Article 448 paragraph 1 item 1); 2) if special circumstances indicate that the defendant will complete the attempted criminal offense or commit a criminal offense they threaten with, or repeat a criminal offense (Article 448 paragraph 1 item 2); 3) if there are circumstances that indicate that the defendant will destroy, hide, alter or forge evidence or that they will interfere with the procedure by influencing witnesses, accomplices or those concealing the crime (Article 448, paragraph 1, item 3) and 4) if duly summoned defendants avoid appearing at the main hearing (Article 448 paragraph 1 item 4).

Court	Basis for ordering detention in the monitored cases								
	Article 175 paragraph 1					Article 448 paragraph 1			
	Item1	Item2	Item3	Item4	Item5	Item1	Item2	Item3	Item4
Basic Court Bar			2						
Basic Court Bijelo Polje	2								
Basic Court Žabljak			1						
Basic Court Kotor	1	1	1						
Basic Court Nikšić	1					2			
Basic Court Plav	2	1				1			
Basic Court Podgorica	5		2			6	7		1
Basic Court Herceg Novi						1			
Basic Court Cetinje						1			
High Court Bijelo Polje	10	2	5	6					
High Court Podgorica	12	2	8						
Total	**33**	**6**	**19**	**6**	**0**	**11**	**7**	**0**	**1**

Table 20: Overview of grounds for ordering custody in cases followed by case file examination, by types of courts

Among the measures that can be taken to ensure defendant's presence and to achieve an unobstructed running of the criminal proceedings, detention is the most difficult one envisaged by the Montenegrin CPC. Provision of Article 174 of the CPC state the exceptional cases of imposing detention, providing that detention may be ordered only if the same purpose of the proceedings cannot be achieved by another measure, and is necessary for the unobstructed running of the proceedings.

It is the duty of all the authorities involved in the criminal proceedings and the authorities that provide them with legal assistance to act **with extreme urgency if defendant is in detention**.

Based on the analysed cases, the largest percentage of adjourned detention cases was recorded in the Basic Courts Bar (88,89%)[22] and Podgorica (45.61%), as well as the High Courts Bijelo Polje (43.78%) and Podgorica (40.74 %). **The percentage of adjourned hearings in detention cases is 44.38% at the level of all courts, which is not significantly lower than the above total percentage of adjourned hearings (49.51%)**. This raises concern given the need to act with particular urgency in custody cases.

Court	Number of monitored cases	Number of detention cases	Overall number if hearings in detention cases	Number of adjourned cases	Percentage of adjourned cases	Total adjournment measured in days (average)
Basic Court Bar	29	2	9	8	88.89%	66
Basic Court Berane	30	0				
Basic Court Bijelo Polje	31	2				0
Basic Court Danilovgrad	5	0				
Basic Court Žabljak	20	1	1			0
Basic Court Kolašin	18	0				
Basic Court Kotor	30	3	3	1	33.33%	10
Basic Court Nikšić	42	3	4	1	25.00%	0.3
Basic Court Plav	9	2				
Basic Court Pljevlja	30	0				
Basic Court Podgorica	49	21	57	26	45.61%	26
Basic Court Rožaje	21	0				
Basic Court Ulcinj	30	0				
Basic Court Herceg Novi	30	1	1		0.00%	0
Basic Court Cetinje	30	1	3	1	33.33%	1
High Court Bijelo Polje	41	22	46	20	43.48%	18
High Court Podgorica	47	25	54	22	40.74%	21
Total	**492**	**83**	**178**	**79**	**44.38%**	**21**

Table 21: Overview of the overall number of hearings, the number of adjourned hearings and the percentage of adjourned hearings in detention cases monitored by case file examination

The detained person must be served an elaborated decision no later than 24 hours after the detention. The detained person has the right of appeal against the decision on detention,

22 It should be noted that the sample in Bar is small – two detention cases

and the decision on the appeal will be issued by the court within 48 hours. The duration of detention must be kept to a minimum. **Based on the decision of the first-instance court, the detention may last no more than three months from the day it started, and it may be extended for another three months, by a decision of a high court**. If no indictment is lodged by the expiry of those time limits, the defendant will be released. **On the basis of the decision of the investigating judge, the defendant may be detained for a maximum of one month from the date when they were deprived of liberty. After that, the defendant may be detained only on the basis of a decision extending custody**.

Based on observers' analysis, the average length of detention pending investigation was the longest in the High Court in Podgorica (71).

Court	Number of cases monitored	Number of detention cases	Average length of detention in investigations measured in days
Basic Court Bar	29	2	26
Basic Court Berane	30	0	
Basic Court Bijelo Polje	31	2	16
Basic Court Danilovgrad	5	0	0
Basic Court Žabljak	20	1	19
Basic Court Kolašin	18	0	
Basic Court Kotor	30	3	11
Basic Court Nikšić	42	3	22
Basic Court Plav	9	2	20
Basic Court Pljevlja	30	0	
Basic Court Podgorica	49	21	38
Basic Court Rožaje	21	0	
Basic Court Ulcinj	30	0	
Basic Court Herceg Novi	30	1	27
Basic Court Cetinje	30	1	10
High Court Bijelo Polje	41	22	55
High Court Podgorica	47	25	71
Total	**492**	**83**	**29**

Table 22: Overview of the average length of detention in investigations in cases monitored by case file examination, by type of court

Following the submission of the indictment to the court, until the completion of the main hearing, the detention may be ordered or completed only by Council's decision, based the opinion of the public prosecutor, when they press charges in the proceedings. **At the request of the parties or *ex officio*, the Council is required to examine whether there are still grounds for detention, and to issue a decision extending or terminating detention upon expiry of every thirty days until the indictment enters into force, and every two months after the indictment enters into force**. In each examination of the custody, the court determines whether the legal conditions and reasons for continued detention of the defendant in custody are fulfilled and whether the same purpose (unobstructed conduct of criminal proceedings) can be achieved by another measure. If the court finds that the defendant should be remanded in custody, the decision must state detailed and individualized reasons. **The longest time the detention can last from the day the indictment is lodged to passing the first instance judgement can be no longer than three years**.

According to the observers' analysis, the longest average length of detention after the indictment was filed, was in cases before the High Court Podgorica (82).

Court	Number of cases monitored	Number of detention cases	Average duration of detention following indictment, expressed in days
Basic Court Bar	29	2	21
Basic Court Berane	30	0	/
Basic Court Bijelo Polje	31	2	3
Basic Court Danilovgrad	5	0	/
Basic Court Žabljak	20	1	39
Basic Court Kolašin	18	0	/
Basic Court Kotor	30	3	55
Basic Court Nikšić	42	3	7
Basic Court Plav	9	2	20
Basic Court Pljevlja	30	0	0
Basic Court Podgorica	49	21	37
Basic Court Rožaje	21	0	/
Basic Court Ulcinj	30	0	/
Basic Court Herceg Novi	30	1	0
Basic Court Cetinje	30	1	0
High Court Bijelo Polje	41	22	0
High Court Podgorica	47	25	82
Total	**492**	**83**	**34**

Table 23: Overview of the average length of detention following indictment in cases monitored by case file examination, by types of courts

Through the analysis, we also determined the percentage of detention in the proceedings, in which the plea agreement was reached. Of those cases monitored, the highest percentage of detentions ordered in such proceedings was recorded in High Court Bijelo Polje (71.43%).

Court	Number of agreements concluded	Number of agreements concluded in detention cases	Percentage of detention cases
Basic Court Bar	5	0	
Basic Court Bijelo Polje	21	2	9,52%
Basic Court Danilovgrad	4	0	
Basic Court Kotor	2	1	50,00%
Basic Court Nikšić	6	2	33,33%
Basic Court Plav	3	2	66,67%
Basic Court Pljevlja	1	0	
Basic Court Podgorica	48	23	47,92%
Basic Court Rožaje	1	0	
Basic Court Ulcinj	3	0	

Basic Court Cetinje	5	0	
Basic Court Herceg Novi	5	0	
High Court in Bijelo Polje	7	5	71,43%
High Court in Podgorica	23	12	52,17%
Total	**134**	**47**	**35.07%**

Table 24: Percentage of detention by courts, in cases monitored by case file examination, in which a plea agreement was reached

IV CONCLUSIONS AND RECOMMENDATIONS

Conclusions:

- From the establishment of the European Court of Human Rights until 2018, 58% of the overall number of judgments passed concerned violations of the right to a fair trial. In the period from 2009, when the first judgement was issued against Montenegro, by the end of 2018, the Court found a violation of rights in 51 judgments, of which 68.63% referred to a violation of the right to a fair trial.
- In most indictment cases, the statutory time limit for scheduling an indictment review hearing was met. The deadline was more often met in the High Court Bijelo Polje (85.29%) and the High Court Podgorica (82.98%) than in the Basic Courts (66.67%).
- In the High Courts Bijelo Polje and Podgorica, defendants and defence lawyers were more often present at the indictment review hearing than prosecutors, while in the Basic Courts prosecutors attended a higher number of these hearings.
- The deadline for confirming the indictment was met in all cases before the High Court Bijelo Polje, in 95.74% of cases before the High Court Podgorica and in 33.33% of cases before the Basic Courts, although the longest prescribed deadline considered.
- The statutory time limit for scheduling main hearings in indictment cases has been respected, except in the Basic Court Herceg Novi. The situation is different in the case of the bill of indictment - six Basic Courts respected the statutory time limit in the monitored cases, while nine Basic Courts failed to do so.
- Of the 492 cases monitored, a preliminary hearing was held in three cases, which indicates that it had not been sufficiently used. This is particularly pronounced if the reasons for the adjournment in the monitored cases are taken into account, since the preparatory hearing would undoubtedly have the effect of reducing the number of delays caused by these reasons.
- The number of adjourned hearings in six Basic Courts is higher than the number of hearings held (Bar, Berane, Bijelo Polje, Kolašin, Kotor, Nikšić).
- The most common reason for adjourning hearings within the cases monitored by case file examination is the absence of the defendant - 27.55%. Apart from the above, the most common reasons identified in this analysis are other issues, gathering of new evidence and absence of a judge.
- The most common reason for interrupting the hearing was the preparation of defence (4 cases). In addition, the reasons included gathering the evidence (2 cases) and the identity of the person who presented themselves as the defendant (1 case) was not established.

- Observers noted the use of forced takein to some extent, but did not noticed the use of fines. The highest number of procedural discipline measure "forced takein" was pronounced in the Basic Court Kotor and the High Court Bijelo Polje (9).
- In the Basic Courts Cetinje, Kolašin, Kotor and Nikšić, as well as in the High Courts Bijelo Polje and Podgorica, there were cases in which the judgment was not delivered within the statutory time limit. Of 492 cases monitored, the deadline for delivery of the judgement was not met in 23 cases.
- The deadline for delivery of the judgment was exceeded in even fewer number of cases than was the case whit publication of judgement. The deadline for delivery of judgments was breached in 10 out of the 492 cases analysed.
- The second-instance proceedings on the basis of appeals against the decisions of the Basic Courts lasted 60 days, while proceedings on the basis of the appeals against the decisions of the High Courts lasted 69 days. The most prevalent decision in the second instance proceedings was rejection of appeal (80.39%).
- Based on the analysed cases, it can be concluded that on average the cases lasted the longest in cases monitored in the Basic Court Kotor (324 days) and the Basic Court Bar (229 days). On the other hand, based on the analysed cases, the proceedings lasted the shortest in Žabljak (55 days) and Ulcinj (53 days). The proceedings lasted an average of 119 days in the Basic Courts, and 184 days in the High Courts.
- In none of the analysed cases, did the defendant use the legal remedy provided for by the Law on the Protection of the Right to a Trial within a Reasonable Time (control request).
- The percentage of adjourned hearings in detention cases in (NA NIVOU) all courts is 44.38%, which is not significantly lower than the percentage of adjourned hearings in total (49.51%).

Recommendations:

- The regulatory framework, the use of the case law of the European Court of Human Rights, as well as its impact on the practice of domestic courts, should be the basis for the full exercise of the right to a fair trial.
- Basic courts should to a greater extent meet the deadline for scheduling an indictment review hearing.
- Prosecutors, defence lawyers and defendants should attend the indictment review hearing more often.
- Basic Courts should meet the deadline for indictment confirmation to a much greater extent.
- Judges should keep good practice of scheduling the main hearing within the statutory time limit, but also avoid drastically exceeding the prescribed period in individual cases.
- The preliminary hearing should be used to a greater extent so that the parties to the proceedings are better informed about the planned course of the main hearing.
- Reduce unnecessary adjournments of judicial proceedings and consistently apply available procedural disciplinary measures, especially with regard to defendants, witnesses and expert witnesses, since their absence was the reason for the adjournment in 44.03% of the cases.
- Courts should continue the good practice of passing and delivering judgment within the statutory time limit.
- It is necessary to organize continuous training related to the trial within a reasonable time, in order to raise awareness of the various actors in the judicial system, especially lawyers, on this issue.
- The percentage of adjourned hearings in detention cases should be lower given the

duty of all the bodies participating in the proceedings and the bodies providing legal assistance to them, to act with extreme urgency if the defendant is in detention.

» Analyse the handling of requests for review at the level of each court and define recommendations for overcoming the noted shortcomings in the enforcement of the Law in each court (e.g. by initiating the changes in their daily work programs, their legal positions and opinion, etc).

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COURT PRACTICE

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